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APPELLANT PRO SE:

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**IN THE  
COURT OF APPEALS OF INDIANA**

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KAREN S. BLACK,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 93A02-0607-EX-613
	)	
REVIEW BOARD OF THE INDIANA	)	
DEPARTMENT OF WORKFORCE	)	
DEVELOPMENT and MICROPULSE, INC.	)	
	)	
Appellees.	)	

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APPEAL FROM THE REVIEW BOARD OF  
THE INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT  
Cause No. 06-R-01721

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**February 28, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**MAY, Judge**

Karen Black, *pro se*, appeals a determination by the Review Board of the Indiana Department of Workforce Development (“the Board”) denying her unemployment benefits. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

Black worked as a third-shift machinist for Micropulse, Inc., from February 28, 2005 until March 20, 2006. On the evening of Friday, March 17, 2006, Black forgot the key to her toolbox and asked a friend, Dawn Robertson, to bring her the spare key. After Robertson arrived with the spare key, Black returned to work at her machine. Robertson remained on the plant floor near Black’s machine for about two hours before leaving. On Monday, March 20, 2006, Black was discharged for violating company policy regarding visitors. The employee handbook stated: “If anyone comes to visit you, you will be paged and asked to meet your visitor in the office lobby near the building entrance. Visitors will be allowed on the plant floor only when authorized by or accompanied by a member of Management.” (Employer Exhibit #2.)

Black’s claim for unemployment compensation was denied on the ground she was terminated for just cause. She appealed the initial decision, arguing Micropulse had not followed the “corrective action process outlined in the employee handbook,” (Appellee’s App. at 32), and she had been “discriminated against because of gender.” (*Id.*) After a hearing, the administrative law judge (ALJ) affirmed the initial determination denying Black benefits. Black appealed to the Board. The Board adopted the ALJ’s findings and conclusions, and affirmed the decision.

## DISCUSSION AND DECISION

Black raises three issues in her appeal.<sup>1</sup> We address one: whether the review board erred in determining she was fired for just cause.

When reviewing a decision by the Board, we determine whether the decision is reasonable in light of the Board's findings. *Ky. Truck Sales, Inc. v. Review Bd. of Ind. Dept. of Workforce Dev.*, 725 N.E.2d 523, 525 (Ind. Ct. App. 2000). The Board's findings of fact are generally conclusive and binding upon this court. *Id.*; Ind. Code § 22-4-17-12(a). When Board decisions are challenged as contrary to law, we examine "the sufficiency of the facts found to sustain the decision and the sufficiency of the evidence to sustain the findings of fact." *Fuerst v. Review Bd. of Ind. Dept. of Workforce Dev.*, 823 N.E.2d 309, 312 (Ind. Ct. App. 2005); Ind. Code § 22-4-17-12(f). We review findings of basic facts under a "substantial evidence" standard; we neither reweigh the evidence nor assess the credibility of witness and we consider only the evidence most favorable to the Board's findings. *Fuerst*, 823 N.E.2d at 312. We determine *de novo* whether the Board correctly interpreted and applied the law. *Ky. Truck*, 725 N.E.2d at 525.

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<sup>1</sup> The three issues she raises in her appeal are: "1. Was there a prima facie case of discrimination under Title VII? 2. Did I receive ineffective assistance of counsel for said hearing? 3. Did the review board err in determining that Micropulse fired me for a just Cause?" (Appellant's Br. at 1.)

Black asserts she made a *prima facie* showing of sexual discrimination under Title VII of the Civil Rights Act of 1964. However, this agency proceeding is not an action under Title VII.

Similarly, Black asserts she received "ineffective assistance of counsel" at the hearing. (Appellant's Br. at 1.) As the Board correctly notes: "The rights guaranteed by the Sixth Amendment, such as the right to counsel, offe[r] no recompense to civil litigants and Black cites no authority supporting her claim. While Black can sue her counsel for malpractice, she cannot ask that this judgment be disturbed based on counsel's performance." (Br. of Appellee Review Board at 8-9.)

A claimant is ineligible for unemployment benefits if she is discharged for “just cause.” Ind. Code § 22-4-15-1. “Discharge for just cause” includes “knowing violation of a reasonable and uniformly enforced rule of an employer.” Ind. Code § 22-4-15-1(d)(2). “To establish a *prima facie* showing of just cause for termination the employer must show that the claimant: (1) knowingly violated; (2) a reasonable; and (3) uniformly enforced rule. After the employer has met its burden, the claimant must present evidence to rebut the employer’s *prima facie* showing.” *Butler v. Review Bd. of Ind. Dept. of Employment & Training Servs.*, 633 N.E.2d 310, 312 (Ind. Ct. App. 1994).

The Board’s decision provided in relevant part:

**FINDINGS OF FACT:**

\* \* \* \* \*

The claimant worked the night shift. On March 17, 2006, the claimant realized she had forgotten her keys to her toolbox. She called Ms. Robertson, a friend, to retrieve her keys from home and bring them in. The ALJ finds Ms. Robertson did so. However, Ms. Robinson then stayed for approximately two hours in the work environment. The claimant had not gotten permission from anyone in management to have a visitor. A couple days later, an employee who observed Ms. Robertson on the factory floor told several other employees, including a supervisor, that the claimant had had a guest who stayed for a couple of hours. The next day, the claimant was discharged.

The claimant and her witness [Robertson] admit that the visitor was in the work environment, near the machines. . . . The employer does have a written policy in its handbook which states: “If anyone comes to visit you, you will be paged and asked to meet your visitor in the office lobby near the building entrance. Visitors will be allowed on the plant floor only when authorized by or accompanied by a member of management.” The rule is found in the handbook. The claimant admits receiving the handbook. The ALJ finds the rule is applicable to all employees and all employees are subject to discharge for violation of the rule. However, the employer testified, and the ALJ finds, that this was the first violation they had had so the claimant was the first person discharged for this violation. . . . [T]he employer testified, and the ALJ finds, that all visitors that the employer is aware of have been approved by management. The employer testified, and

the ALJ finds, that employees ask in advance if they can have a family member or friend visit them and obtain supervisor approval. The claimant never requested supervisor approval.

\* \* \* \* \*

**CONCLUSIONS OF LAW:**

\* \* \* \* \*

In this case, the ALJ concludes the employer had a written rule which forbade visitors on the plant floor without authorization or accompaniment by a member of management. The ALJ concludes the claimant knew of the rule because a copy was given to her in the handbook upon hire. The ALJ concludes the policy is reasonable because it promotes a safe work environment and also protects employer[’s] confidential information which might be available on the plant floor. The ALJ concludes that the rule is uniformly enforced. The employer testified, and the ALJ concludes, that the employees normally request permission to have visitors on the floor. The employer did not know of any incidents in which an employee had a visitor and had not obtained authorization. Therefore, the ALJ concludes that the rule is uniformly enforced. The ALJ concludes the claimant violated the rule. Therefore, the ALJ concludes the claimant was discharged for just cause as defined by Chapter 15, Section 1 of the Act.

**DECISION:** The initial determination of the deputy is affirmed. The claimant was discharged for just cause as defined by Chapter 15, Section 1 of the Act.

(Appellee’s App. at 51-52.)

At the hearing, Black testified Robertson visited her to bring her the keys to her toolbox. Robertson testified she was in the building about two hours. Black did not ask anyone for permission to have Robertson in the plant. Black agreed the policy on visitors was in the employee handbook. An acknowledgment of receipt of the employee handbook, signed by Black, was admitted into evidence. Brian More of Micropulse testified the policy on visitors is applicable to all employees. More was not aware of any other incidents or violations of the policy on visitors. He stated, “It is common for guys to ask to bring family in or whatever but they’ve had permission to do so. Not saying that they were accompanying [sic] by a member of management but they did ask

permission to do so.” (Tr. at 7.) The evidence is sufficient to support the Board’s findings of facts.

These findings support the Board’s decision Black was terminated for just cause. To establish a *prima facie* showing of just cause for termination the employer must show that the claimaint knowingly violated a reasonable and uniformly enforced rule. Black was aware of the rule regarding visitors because it was in the employee handbook she received. Black’s visitor was on the plant floor without permission from management. Black’s visitor was near the machines. Management approved other employees’ guests visiting the plant. Black did not request management approval for her guest. The Board concluded Black was aware of the policy and knowingly violated it, the policy was reasonable because it promoted safety,<sup>2</sup> and the policy had been uniformly enforced.

The evidence supports the Board’s findings, and the findings support the Board’s decision. We accordingly affirm.

Affirmed.

NAJAM, J., and MATHIAS, J., concur.

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<sup>2</sup> The Board concluded the policy was reasonable because it promotes a safe work environment and protects confidential business information. Micropulse manufactures medical parts and prohibits employees from releasing “any potential or known confidential information.” (Appellee’s App. at 52.) Micropulse claimed Black had violated the confidentiality policy as well as the visitor policy. An acknowledgement of the confidentiality policy, signed by Black, was admitted into evidence.